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DECISION | **THE COMPTROLLER GENERAL OF THE UNITED STATES** WASHINGTON, D.C. 20548

FILE: B-211228 **DATE:** January 25, 1984

MATTER OF: Roan Corporation

DIGEST:

1. Protest is sustained where agency improperly rejected low bid for rental of police cars as materially unbalanced since bid was not even mathematically unbalanced despite heavily "front-loaded" base period price. Bidder would not enjoy windfall or own and use cars subsequent to contract period should options not be exercised.

2. Claim for bid preparation costs is disallowed where low bid could not be accepted, since its heavily front-loaded base period price exceeded available agency funds.

Roan Corporation (Roan) protests the United States Marshal's Service (Justice) rejection of its low bid for the nationwide rental of 358 police cars, under invitation for bids (IFB) No. 3M-701, issued in January 1983, for 1 year plus 2 additional option years. Bids were evaluated on the basis of prices quoted for both the base period (first year--approximately May 1983 to April 1984) and the option periods (second and third years).

We sustain the protest.

Although Roan's total bid was low (approximately $1.5 million lower than the awardee), it was heavily front-loaded with a base period price amounting to 89 percent of its total price. This heavy front-loading caused Roan's bid to become low only in the eleventh month of the first option year; moreover, the price of Roan's first year of performance exceeded Justice's available 1983 funding making award to Roan impossible. Therefore, Justice rejected the bid and awarded the contract to "We Try Harder," Inc. (an affiliate of Avis, Inc.) (Avis), whose base period bid was within the available funding and was equal to its bid for each of the option years involved.

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Roan contends its bid was improperly rejected because all bidders, save Avis, front-loaded their bids to cover the costs associated with the purchase of the police cars on a special order basis and the "termination risks" inherent in the IFB's termination provision. This provision read:

> "The original term of this contract will be for the 12 month period from [May 1983] subject to the availability of funds after September 30, 1983.
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> . . . . .
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> "The continuation of any contract awarded as a result of this solicitation beyond September 30, 1983, is contingent upon availability of funds. If terminated within the initial 12 months, Justice will pay the contractor a sum equal to that charged for 60 days or 50% of the charges due during the remainder of the initial 12 months, whichever is less."

Four firms submitted bids. All bids with the exception of Avis were front-loaded. The bids covered two kinds of cars, a large number of sedans (322) and a small number of station wagons (36). We restrict our discussion to the sedans since the situation with the station wagons is similar. The pattern of bidding was as follows:

Monthly lease charge (to nearest dollar)				Total Price
	Base year	1st Option year	2nd Option year	3 years
Avis	344	344	344	$3,987,648
Crown	446	146	138	$2,820,720
Roan	604	36	36	$2,612,064
Carter	736	302	139	$4,547,926

Justice argues that Roan's bid is both mathematically and materially unbalanced. Justice contends that Roan's bid is mathematically unbalanced because it is so heavily front-loaded that Roan will recover a substantial portion of the cost in the first 5 months of the contract.

The mathematical aspect of unbalanced bidding is assessed by the contracting officer's review of the pricing structure of the bids bearing in mind any differences between the scope and the nature of the services offered during the base period and the services offered during the option periods. The purpose of the assessment is to determine whether each bid item carries its share of the cost of the work plus profit or whether the bid is based on nominal prices for some work and enhanced prices for other work. Crown Laundry and Dry Cleaners, Inc., B-208795.2; B-209311, April 22, 1983, 83-1 CPD 438. As we said in the cited case:

> ". . . we believe it is proper to determine whether unbalancing exists by focusing on the pricing structure and the services to be rendered. Moreover, although business reasons for front-loading bids to such an extreme may well exist, we cannot ignore the fact that a bid such as Crown's enables the bidder to use during a base contract period Government funds more properly allocable to option periods and creates the prospect of a windfall if all options for some reason are not exercised. . . . In this regard, we observe that the business reasons Crown offers for its bid, recoupment of all equipment costs in the first year even though it will own and use the equipment in subsequent years, assumes that it is proper to obtain Government funds in the base year even though the funds are more properly allocable to the option years."

The contracting officer found that Roan recovered 89 percent of the contract price after the base period of the contract and that this projected recovery resulted in a mathematically unbalanced bid. Roan contends that its base period price carries its fair share of the cost of work plus profit when the high startup cost (each sedan cost $10,096) and the effect of the special termination clause are considered. Roan points out that after purchase and delivery to Justice of the cars, which occurs within 45 days of award, the contractor has no further costs since until the cars are returned all maintenance is handled by the government. Moreover, should the government terminate the lease after 5 months (and the 5 monthly payments of $3,020 per car have been used to pay off the car loan) Roan would still owe $7,076 on each car. Roan has no other use for the police cars, and once they are used they have limited value as a corporate asset because most leases require the provision of new vehicles. Therefore, Roan would attempt to sell the cars in order to repay the loan amounts. The resale cost is approximately $385 which includes reconditioning, auction fee, transportation cost and holding costs. Consequently, if the contract were terminated at the 5 month point Roan would need to recover (via termination costs and sale of the cars) approximately $7,461 to break even and pay off the car loan and resale costs.

Roan believes that the cars would depreciate approximately 40 percent after 5 months use and would, therefore, bring in about $6,075 each at auction. Under the contract the government would pay termination costs of $1,208 per car. Thus, Roan would recover approximately $7,283 and lose about $178 per car.

Roan further contends that its costs are properly allocable to the base period and not properly allocable to the option periods because, under conservative accounting principles, where an owner has no use for an asset following the performance of a specific contract and the contract consists of base and option periods, the useful life of the asset should be deemed to be the base period of the contract.

We conclude that Roan's bid is not mathematically unbalanced since Roan would not obtain a windfall if all options are not exercised; moreover, unlike the circumstances in Crown Laundry, above, Roan will not own and use the equipment in years subsequent to the contract period.

Therefore, we need not consider whether the bid was materially unbalanced. It follows that Roan's bid was improperly rejected as nonresponsive and that award to Avis was also improper since under the terms and conditions of the IFB Roan and not Avis was the low bidder.

Since insufficient funds were available to make an award to Roan, Justice should have canceled the procurement and resolicited. See Somers Construction Company, Inc., B-193929, April 24, 1979, 79-1 CPD 284; affirmed, Somers Construction Company, Inc.--Reconsideration, B-193929, July 24, 1979, 79-2 CPD 54. However, because an award was forced upon Justice by the need to place an order for the cars with the manufacturer prior to the close of the assembly line in late February, we will not recommend the termination of the contract with Avis. Instead, we recommend that the options not be exercised and that Justice recompete its requirement. We also recommend that Justice disclose its available funding for the reprocurement to all bidders.

Roan has also filed a claim for bid preparation costs. Although bid preparation costs may be recovered if the claimant can show both arbitrary or capricious government action with respect to its bid and that it had a substantial chance of receiving the award except for the agency's improper action, Boone, Young & Associates, Inc., B-199540.3, November 16, 1982, 82-2 CPD 443, Roan is ineligible for bid preparation costs since Roan's bid exceeded available funding.

The protest is sustained and the claim disallowed.

for Milton J. Socolar
Comptroller General
of the United States